

Effective: April 1, 199596.00 Utility Accommodation
96.03 Indemnification**Supersedes:** March 1, 1992

By: Director, Bureau of Highway Operations

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The following shall be a condition of all utility permits:

The Applicant shall save and hold the State, its officers, employees, agents, and all private and governmental contractors and sub-contractors with the State under Ch. 84, Stats., harmless from and against all liability, damage, loss, expense, claims, demands and actions of any nature whatsoever (including any by Applicant itself) which arise out of or are connected with, or reclaimed to arise out of or be connected with any of the work done by the Applicant, or the construction or maintenance of facilities by the Applicant, pursuant to this permit or any other permit issued by the State for location of property, lines or facilities on highway right-of-way, (1) while the Applicant is performing its work, or (2) while any of the Applicant's property, equipment, or personnel, are in or about such place or the vicinity thereof, or (3) while any property constructed, placed or operated by or on behalf of Applicant remains on the State's property or right-of-way pursuant to this permit or any other permit issued by the State for location of property, lines or facilities on highway right-of-way; including without limiting the generality of the foregoing, all liability, damages, loss, expense, claims, demands and actions on account of personal injury, death or property loss to the state, its officers, employees, agents, contractors, subcontractors or frequenters; to the Applicant, its employees, agents, contractors, subcontractors or frequenters; or to any other persons, whether based upon, or claimed to be based upon, statutory (including, without limiting the generality of the foregoing, worker's compensation), contractual, tort, or other liability of the State, the Applicant, or any other persons, and whether or not caused or claimed to have been caused by active or inactive negligence or other breach of duty by the State, its officers, employees, agents, contractors, subcontractors or frequenters; Applicant, its employees, agents, contractors, subcontractors or frequenters; or any other person. Without limiting the generality of the foregoing, the liability, damage, loss, expense, claims, demands and actions indemnified against shall include all liability, damage, loss, expense, claims, demands and actions for damage to any property, lines or facilities placed by or on behalf of the Applicant pursuant to this permit or any other permit issued by the State for location of property, lines or facilities on highway right-of-way in the past or present, or that are located on any highway or State property or right-of-way with or without a permit issued by the State, for any loss of data, information, or material; for trade-mark, copyright or patent infringement; for unfair competition or infringement of any other so-called "intangible" property right; for other infringement of personal or property rights of any other so-called "intangible" property right; for defamation, false arrest, malicious prosecution or any other infringement of personal or property rights of any kind whatever. The Applicant shall at its own expense investigate all such claims and demands, attend to their settlement or other disposition, defend all actions based thereon and pay all charges of attorneys and all other costs and expenses of any kind arising from any such liability, damage, loss, claims, demands and actions.

Any transfer, whether voluntary or involuntary, of ownership or control of any property constructed, placed or operated by or on behalf of the Applicant that remains on the State's property or right-of-way pursuant to this permit shall not release Applicant from any of the indemnification requirements of this permit, unless the State is notified of such transfer in writing. Any acceptance by any other person or entity, whether voluntary or involuntary, of ownership or control of any property constructed, placed or operated by or on behalf of the Applicant that remains on the State's property or right-of-way pursuant to this permit, shall include acceptance of all of the indemnification requirements of this permit by the other person or entity receiving ownership or control.

Notwithstanding the foregoing, a private contractor or subcontractor with the State under Ch. 84, Stats., that fails to comply with secs. 66.047 and 182.0175, Stats. (1985-86), remains subject to the payment to the Applicant of the actual cost of repair of intentional or negligent damage by the contractor or subcontractor to any property, lines, or facilities placed by or on behalf of the Applicant pursuant to this permit or any other permit issued by the State for location of property, lines or facilities on highway right-of-way, and remains subject to payment to the Applicant for losses due to personal injury or death resulting from negligence by the contractor or subcontractor.

Notwithstanding the foregoing, if the State, or its officers, employees and agents, fail to comply with secs. 66.047 and 182.0175, Stats. (1985-86), the State, or its officers, employees and agents, remain subject to the payment to the Applicant of the actual cost of repair of willful and intentional damage by the State, or its officers, employees and agents, to any property, lines or facilities placed by or on behalf of the Applicant pursuant to this permit or any other permit issued by the State for location of property, lines or facilities on highway right-of-way, and remain subject to payment to the Applicant for losses due to personal injury or death resulting from negligence by the State, its officers, employees and agents.

No indemnification of private contractors or subcontractors with the State under Ch. 84, Stats., shall apply in the event of willful and intentional damage by such private contractors or subcontractors to the property, lines and facilities of the Applicant located on the highway right-of-way pursuant to this permit or any other permit issued by the State for the location of property, lines or facilities on highway right-of-way.